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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/749,106
Filing Date: December 27, 2000
Appellant(s): BATES ET AL.

Gero G. McClellan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/09/2008 appealing from the Office action mailed 07/10/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,769,127	Bonomi	7-2004
5,914,712	Sartain	6-1999

6,269,343

Pallakoff

7-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bonomi et al. (US 6,769,127 B1) in view of Sartain et al. (US 5,914,712 A) and further in view of Pallakoff (US 6,269,343 B1).

Regarding claim 5, Bonomi teaches a method for determining a price of a program transmitted by a programming provider to subscribers, comprising: receiving (by 722 – figure 7A), via a network connection, a purchase order for a program from a subscriber (see col. 23, lines 40-45; figure 1B and 7A) belonging to a subscriber group defined by two or more subscribers (see customer list – figure 12A), wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider (see account information for Li Liu as shown in figure 12A) whereby the subscriber pays the programming provider in order to receive paid for programming (see figure 12A; col. 23, lines 36- 40 and 47-50; col. 2, lines 37-42; col. 21, line 67 to col. 22, line 1; col. 19, lines 14-18; col. 35, lines 1-22), and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the

program (the subscribers have the power to purchase or not purchase the program - see col. 9, lines 5-26 and figure 15F).

Bonomi teaches that the programming provider maintains a list of subscribers (see figures 8C-8D, 12A-12H) but does not explicitly teach that the list of subscribers includes a plurality of subscriber groups, wherein each group includes a subset of subscribers and wherein members of each subscriber group are determined prior to an offer to purchase the program. However, a group of subscribers can be easily defined as the group which video programming from a specific earth headend as disclosed by Sartain. For instance, one block on a street can form a subscriber group. Another example, a group of subscribers speaks a language different from another group. See col. 6, lines 49-57. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonomi by defining subscribers into a plurality of subscriber groups in accordance with, for example, a block on a street or speaking a language, as disclosed by Sartain in order to help operator at the provider to easily update the list of subscribers and/or distribute programming to subscribers in an effective manner.

Sartain further discloses that when a subscriber of a group calls to request a video, the subscriber's telephone number is compared with a stored list of telephone numbers associated with subscribers who have previously not paid for video selections. If the subscriber's telephone number is matched with one of the stored list of telephone numbers, the request for the video is refused. Another example, when a subscriber of a group reaches an account limit, the request for a video is denied. See col. 5, lines 1-22.

In other words, the provider monitors the subscriber's payment histories and/or account limit prior accepting the request or prior to an offer to purchase the video. That is, the provider must identify or determine a subscriber belong to a group each time the subscriber requests for a video. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonomi by determining subscribers belong to a subscriber group prior to an offer to purchase the video as disclosed by Sartain in order to ensure that only authorized subscriber or valid customer to access to the network.

Bonomi teaches determining a price for purchase order (e.g., \$6.95 for each purchase order of movie "America Beauty" – see figure 15F). Bonomi does not explicitly teach offering, to a first subscriber group of the subscriber groups, the program to purchase at a predetermined price; determining a first price (special/discount price) for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the first subscriber group; and determining a second price (regular price), higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group, wherein the threshold number of subscribers belonging to the first subscriber group is all the subscribers of the subscriber group. However, Pallakoff discloses determining a price based upon a threshold number of purchasers and/or number of purchasers of buying group. For instance, Pallakoff's system sends a message "We just need 5 more people to join the Buying Team in order to get the soccer ball for only \$10 each. Tell your friends!" to suggest the current purchasers to tell their friends about the offer in order to

get more buyers to join the buying group (see col. 10, lines 43-56). In other words, Pallakoff teaches offering a predetermined price P (e.g., $P > \$10$) to purchase an item to a buying group, and determining a special/discount price ("first price") P_1 based upon an actual number of purchasers of the buying group plus five (since need five more purchasers to join the buying group); and determining a regular price ("second price") P_2 , higher than the special/discount price ($P_2 > P_1$ since P_1 is a discount price), based upon an actual number of purchasers of the buying group plus n , where n is a number of buyers invited to join to the buying group and $0 \leq n \leq 4$. That is, the number of all current purchasers of the buying group plus five corresponds to "the threshold number of subscribers belonging to the first subscriber group", and the number of all current purchasers of the buying group corresponds to "the threshold number of subscribers belonging to the first subscriber group purchasing the program is all the subscriber of the first subscriber group". It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonomi by offering a predetermined price to purchase the item to a buying group, determining a price based upon a threshold number of purchasers and/or number of purchasers of buying group and enticing people to join in the buying group for offering a discount price as taught by Pallakoff in order to benefit provider/seller to get higher number of purchasers in an effective manner.

(10) Response to Argument

In response to appellant's argument (Appeal Brief pg. 10 to pg. 11) that the modification of Bonomi by Sartain is improper, the examiner respectfully disagrees.

Appellant argues that the cited benefits of the combination, to help an operator at the provider to easily update the list of subscribers and/or distribute programming to subscribers in an effective manner, is already provided by Bonomi. The examiner concedes that the method of updating a list of subscribers in Bonomi is not clearly improved by the subscriber grouping of Sartain. Bonomi, however, does not disclose the benefit of distributing programming to subscribers in an effective manner as can be seen with reference to figure 1B. The figure shows a video delivery center 152 providing video content to client machines 162 and 164. Video delivery center 152 must contain all the video content desired by all the client machines even if certain client machines will never request certain contents. The benefit provided by Sartain can be seen in figure 3. The client machines, 130-140, are divided into groups and each group is serviced by an earth headend, 110-114. This allows each headend to contain only content specific to each group and thus a more effective manner in which video content is distributed. See column 1 line 4 to column 2 line 3 and column 6 lines 49-57 of Sartain.

Appellant further argues that Bonomi teaches away from the combination with Sartain because "[o]ne of the objectives of Bonomi is to achieve a higher level of granularity in order to customize the service of individual users." The addition of the teachings of Sartain, however, furthers this objective by customizing the services provided to the users based on their needs.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/John R Schnurr/

Examiner, Art Unit 2421

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/JOHN W. MILLER/

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